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REDMAN, JERRY E

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN H. GILLEN

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Appeal 2010-001808  
Application 10/781,395  
Technology Center 3600

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Before: KEVIN F. TURNER, STEPHEN C. SIU, and  
PHILLIP J. KAUFFMAN, Administrative Patent Judges.

KAUFFMAN, Administrative Patent Judge.

DECISION ON APPEAL

## STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1-16. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

## THE INVENTION

Appellant's claimed invention "relates to a vehicular, powered slider drive assembly and, in particular, to a vehicular, powered slider drive interface." Spec. 1:11-13. Independent claim 1, reproduced below, is representative of the claimed subject matter (emphasis added):

1. A powered slider drive interface for opening and closing a vehicle slider panel across a window aperture, comprising:

a slider panel;

a regulator;

at least first and second mechanical stops mounted on the slider panel or the regulator, both first and second stops having a contact surface; and

one or more mechanical stops mounted on the other of the slider panel or the regulator, the one or more stops having third and fourth contact surfaces;

wherein when the regulator is caused to move in a first direction the first stop contact surface is brought into mechanical contact with the third contact surface, thus urging the slider panel into an open position at which there is a space between the second stop contact surface and the fourth stop contact surface;

further wherein when the regulator is caused to move in a second direction, the second stop contact surface is brought into mechanical contact with the fourth contact surface, thus urging the slider panel into a closed position at which there is a space between the first stop contact surface and the third stop contact surface.

## REJECTIONS

Appellant seeks review of the following rejections:

1. Rejection of claims 1, 2, 6-8, 12, and 14-16 under 35 U.S.C. § 102(b) as anticipated by Koneval (US 6,324,788 B1; issued December 4, 2001).
2. Rejection of claims 3-5, 9-11, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Koneval, MacMillan (US 6,435,636 B1; issued August 20, 2002), and Hirsch (US 6,207,911 B1; issued March 27, 2001).

## CONTENTION AND ISSUE

Appellant's Specification describes that it was known in the art that powered slider drive assemblies for the sliding window of pickup trucks (and other vehicles) that include regulators rigidly attached to the sliding panel tend to misalign (become "cocked") and bind. Spec. 2:11-16. Appellant's claimed device is intended to overcome this known problem by configuring the regulator and driver bracket with two pairs of contact surfaces arranged so that during movement in one direction there is mechanical contact between the first pair of contact surfaces while there is space between the second pair of contact surfaces, and, conversely, during movement in the second, opposite direction, there is space between the first pair of contact surfaces while there is mechanical contact between the second pair of contact surfaces. Spec. 6:6-19. Both the claims and Appellant's Specification, by contrasting "mechanical contact" and "space," implicitly define "space" between contact surfaces as the lack of mechanical contact between those surfaces.<sup>1</sup> Spec. 6:10-15.

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<sup>1</sup> Because the intrinsic record is clear, we ignore the definition provided by the Examiner to the extent it is inconsistent. See *Digital Biometrics Inc., v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed. Cir. 1998); see also Ans. 6.

Independent claims 1, 6, 7, 12, and 14 each similarly call for mechanical contact between a first pair of surfaces and a lack of mechanical contact (space) between a second pair of surfaces during movement in a first direction.

Appellant contends that Koneval's device is rigidly assembled and that Koneval does not disclose space between the second pair of contact surfaces during movement in the first direction as claimed. App. Br. 13-22.

The issue before us is whether Koneval discloses a lack of mechanical contact (space) between the second pair of contact surfaces during movement in the first direction as claimed.

#### ANALYSIS

Rejection of claims 1, 2, 6-8, 12, and 14-16 under 35 U.S.C. § 102(b) as anticipated by Koneval

Koneval discloses a powered window regulator for actuating horizontal sliding window panes in a motor vehicle window assembly. Koneval, col. 1, ll. 6-7. Koneval discloses an embodiment where sliding pane 216 is connected to upper pane attachment 228 having engagement tabs 230 that fit into slots 218 of carrier block 212 which is slidably retained in guide rail 210. Koneval, col. 6, ll. 31-38; fig. 9. Koneval discloses that "movement of block 212 along guide rail 210 is positively transferred to sliding pane 216." Koneval, col. 6, ll. 35-37 (emphasis added); fig. 9. Koneval discloses that tabs 230 may be removed from slots 218 to permit manual operation of the sliding pane 216. Koneval, col. 6, ll. 36-40. Koneval does not explicitly disclose that during movement in a first direction, one end of tab 230 contacts one end of slot 218 (the first pair of

contact surfaces) while there is space between the opposing ends of tab 230 and slot 218 (the second pair of contact surfaces).<sup>2</sup> Koneval, *passim*.

The Examiner found that the ends of tab 230 and the ends of slot 218 correspond to the claimed two pairs of contact surfaces. Ans. 3-4. The Examiner reasoned that because tab 230 removably engages slot 218, there must be “space” as claimed between the end of tab 230 and the end of slot 218. Ans. 3-6. Based on this, the Examiner found that Koneval discloses space between the second pair of contact surfaces during movement in the first direction as claimed.

We cannot agree with the Examiner’s logic that because tab 230 is removable from slot 218 there is “space” (a lack of mechanical contact) between tab 230 and slot 218 as claimed. First, such logic would suggest there is space between both of the two pairs of contact surfaces when, in contrast, the independent claims call for space between the second pair of contact surfaces and mechanical contact between the first pair of contact surfaces during movement in the first direction. Second, such logic is also flawed in that removable engagement of tab 230 into slot 218 does not mean there is a lack of a mechanical contact between the end surfaces of tab 230 and slot 218. The Examiner has ignored the possibility of frictional, removable engagement between tab 230 and slot 218, where the fit causes mechanical contact between the surfaces without preventing the removal of tab 230 from slot 218.

Beyond the lack of explicit disclosure to support the Examiner’s finding and the faulty logic regarding the space created by removability,

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<sup>2</sup> The ends of tab 230 and slot 218 referred to are the surfaces perpendicular to the axis of movement (the longitudinal axis of drive cable 220). See Ans. 4 annotated Koneval, fig. 9. Hereinafter, we refer to these surfaces as “ends” and “end surfaces.”

Koneval's disclosure that movement is "positively transferred" from block 212 to sliding pane 216 suggests a fit between both ends of tab 230 and slot 218 that involves mechanical contact so that the motion is fully transferred. Given this, we cannot conclude by a preponderance of the evidence that Koneval discloses space between the second pair of contact surfaces during movement in the first direction as called for in independent claims 1, 6, 7, 12, and 14.<sup>3</sup> As such, we reverse the rejection of claims 1, 6, 7, 12, and 14, and their respective dependent claims 2, 8, 15, and 16.

Rejection of claims 3-5, 9-11, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Koneval, MacMillan, and Hirsch

The rejection of claims 3-5, 9-11, and 13 relies upon the same erroneous finding of fact that Koneval discloses space between the second pair of contact surfaces during movement in the first direction as claimed. See Ans. 4. For that reason, we also reverse the rejection of claims 3-5, 9-11, and 13.

## CONCLUSION

Koneval does not disclose space between the second pair of contact surfaces during movement in the first direction as claimed.

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<sup>3</sup> The Examiner states that Appellant has not shown the criticality of the claimed "space," and states that if space is the basis for the novelty of the invention such space should have been quantified. See Ans. 6. These attempts to shift the burden to Appellant do not alter our analysis.

Appeal 2010-001808  
Application 10/781,395

DECISION

We reverse the Examiner's decision to reject claims 1-16.

REVERSED

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